IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3603 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ORIENTAL INSURANCE CO.LTD.

Versus

RAJU RAMANLAL

Appearance:

1. First Appeal No. 3603 of 1997

MR KV GADHIA for Petitioner No. 1

MR JS YADAV for Respondent No. 1

RULE SERVED for Respondent No. 2

MR HARSHAD J SHAH for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 10/03/2004

ORAL JUDGEMENT

This appeal by the appellant Insurance Company

under Section 30 of the Workmen Compensation Act, is directed against the judgment and order dated 30.12.1996 passed by the Commissioner, Workmen Compensation Act, Ahmedabad in W.C.A. No.18 / 1986 directing the appellant and respondent Nos.1 & 2 to pay Rs.26,216=00 as compensation and Rs.5243.20 ps. as penalty to the respondent No.3 who had filed the said application for compensation.

The case of the respondent No.3 was that he had been in the employment of the respondent Nos. 1 & 2 for about nine years and his daily wages were Rs.21/-. On 14.11.84, while he was working, a nail blew into his left eye and he suffered 40 % disability. He, therefore, filed the said application claiming Rs.26,216/- as compensation, Rs.2,000/- as cost of the treatment, penalty and interest. The respondent No.1 and 2 were joined as opponent Nos.1 and 2 and the appellant insurance company was impleaded as opponent No.3 in the said application.

The respondent Nos.1 & 2 in their written statement denied that respondent No.3 was their employee. According to them, he was an employee of M/s Gafurbhai S. Prajapati and it was the said firm and the appellant insurance company who were liable to pay compensation. In their reply, they had also mentioned the number of the insurance policy.

The appellant insurance company contended that the respondent No.3 was not covered under any policy which could be said to have been taken up by the respondent Nos. 1 & 2. At the trial, the respondent No.3 gave oral evidence, while on behalf of the appellant, one of their Officers gave oral evidence to the effect that the respondent No.3 was not covered under any insurance policy.

The learned Commissioner, after appreciating evidence on record, came to the conclusion that respondent No.3 was an employee of the respondent Nos. 1 & 2. As for the liability of the insurance company, the Commissioner held that the letter of the insurance company produced by the respondent Nos.1 & 2 showed that they were insured. He, therefore, rejected the contention of the appellant that it was not liable.

The appellant-insurance company has, therefore, filed this appeal challenging the said order.

It is contended on behalf of the appellant that

the Commissioner has erred in recording the finding that the respondent No.2 was insured. The learned advocate for the appellant contended that the respondent No.2 did not produce any copy of the policy. However, the respondent Nos.1 & 2 had produced the letter dated 29.11.1984 addressed by the appellant to M/s Gafurbhai S. Prajapati and M/s Bhagwati Timber Mart - respondent No.2 calling upon them to furnish the particulars in connection with the accident to the respondent No.3 as stated in the said letter. The policy number was also mentioned in the said letter. The insurance company did not produce the copy of the policy though the number was mentioned in their letter. In the circumstances, in my opinion, the Commissioner was perfectly justified in drawing the inference that the respondent No.2 was insured since the letter was also addressed to them. The finding recorded by the Commissioner is a finding of fact based on appreciation of evidence on record. No substantial question of law arises and there is no warrant for interfering with the said finding. Hence, the contention of the appellant that the appellant is not liable fails and is rejected.

However, the Commissioner fell into error in directing the appellant to pay penalty. It is well settled that the insurance company is not liable to pay penalty. Hence, the said direction requires to be deleted.

The result is that the appellant's contention that it is not liable to pay compensation fails. However, the direction to them to pay the amount of penalty is deleted. The principal amount awarded to the respondent No.3 is Rs.26,216/-. The appellant is liable to pay the said amount. Out of the amount deposited by the appellant before the Commissioner, Rs.26,216=00 shall be paid to the respondent No.3 and the rest of the amount shall be refunded to the appellant.

The appeal is allowed only to the aforesaid extent. No order as to costs.

Since the appeal is disposed of, Civil Application Nos.9143 and 9144 of 1997 do not survive and, accordingly, they stand disposed of.

Date : 10.3.2004 [M.C.Patel, J.]

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